

National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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Thilmany Pulp & Paper Co., Case 30-CA-9686

530-6067-6001-3700, 530-6067-6001-3740, 530-6067-6001-3750

This case was submitted for advice as to whether the Employer has violated Section 8(a)(5) of the Act by refusing to provide the Union with information concerning whether unit employees are performing struck work.

FACTS

Local No. 147, United Paperworkers Int'l. Union (Union) and Thilmany Pulp & Paper Co. (Employer), are parties to a collective bargaining agreement in effect from September 4, 1986 until July 31, 1989. The contract contains, inter alia, a broad grievance-arbitration clause, a no-strike/no-lockout provision and a clause regarding the subcontracting of unit work.

International Paper, the Employer's parent company, is involved in labor disputes at several of its plants other than the Employer's operation. One such dispute is a lockout at Mobile Mill in Alabama that commenced on March 21, 1987, [1] and another is a strike at Nicolet Paper in Wisconsin that commenced on June 8. As a result of the Mobile Mill lockout, the Employer transferred Thilmany plant supervisors to Mobile Mill to help run the plant and temporarily replaced these supervisors at Thilmany with unit employees. The Union objected to this practice by letter to the Employer dated June 4, and the Employer subsequently ceased assigning unit employees to perform non-unit supervisory work at the Thilmany plant.

The Union also learned, through employee observation of work orders, that work which would have been performed at Mobile Mill and Nicolet Paper but for the ongoing labor disputes at those plants was being diverted to the Thilmany plant. Thilmany employees complained to the Union that they had been assigned overtime hours apparently in order to perform the struck work from the other two plants. The Employer rescinded the overtime assignments immediately following the Union's verbal objection. On June 22, the Union sent to the Employer a letter protesting the performance by Thilmany unit employees of "struck work" from Mobile Mill and Nicolet Paper. The Employer responded by letter dated June 25, stating that "Thilmany [was] not performing any work that would have been performed at Nicolet but for the strike." Shortly thereafter, the Employer converted to a centralized billing system that makes it more difficult for employees or the Union to identify struck work.

Finally, as a result of continuing employee complaints that orders for work being performed at Thilmany indicated that the work was for Nicolet Paper or other struck plants, the Union sent a letter to the Employer on July 27 stating that struck work was being performed at Thilmany in violation of an agreement between the parties, and that the Employer has made identification of such work more difficult. The Union, therefore, requested that it be provided with "all pertinent information regarding struck work being performed by bargaining unit employees." The Employer, by letter dated July 28, replied that the Union had learned the Employer's position in the Employer's letter of June 25. The Employer has not provided the Union with any further information pertaining to the Union's request.

The Union contends that it needs the information to persuade the Employer not to assign struck work to unit employees. The Union also contends that it needs the information to decide whether to file a contractual grievance alleging breach of an implied agreement not to require unit employees to perform struck work, and to support any grievances that might be filed should employees refuse to perform the work and subsequently be disciplined by the Employer.

ACTION

We conclude that by failing to provide the Union with information concerning whether unit employees are performing struck

work, the Employer violated Section 8(a)(5) of the Act.

It is well settled that an employer has a duty to provide a union with requested information that is relevant to "bargainable issues," [2] including information pertinent to contract negotiations, [3] a union's administration of an extant collective bargaining agreement, [4] and the determination whether to file a contractual grievance. [5] "Where the requested information concerns wage rates, job descriptions, and other information relating to employees in the bargaining unit, the information is presumptively relevant to bargainable issues." (Emphasis added.) [6]

In the instant case, the Union has requested information regarding the possibility that unit employees are performing struck work coming from other plants of the Employer.[7] It is clear that a "struck work" clause is lawful if it relates to struck work originating from another of the signatory employer's plants or from that of a "struck work ally" of that employer. [8] Moreover, in our view, the issue of struck work from other plants of the same employer or its "ally" being performed by unit employees constitutes a mandatory subject of bargaining. Accordingly, an employer would have a duty to provide information concerning the performance of such work by unit employees upon a union's request.

Generally, an employment requirement is a mandatory subject of bargaining under the Act if it is "germane to the 'working environment'" of the employees and if its establishment "is not among those 'managerial decisions...which lie at the core of entrepreneurial control.'" [9] The performance of struck work by unit employees meets this standard. As stated above, a contract clause privileging employees' refusal to perform struck work can be a lawful clause. [10] Concededly, the issue in the cited case was only whether the clause was lawful, i.e., outside of Section 8(e), not whether it was mandatory. However, a determination of legality under Section 8(e) means that the matter is germane to the interests of the primary unit employees. Moreover, although the instant Union's concern emanates from labor disputes in other plants and bargaining units, the Employer has brought those disputes to the instant unit by requiring unit employees to perform struck work from the other plants. The Union's interest in unit employees' non-performance of struck work, therefore, is "germane to the working environment" of the instant unit employees and constitutes a mandatory subject of bargaining. [11]

Moreover, we conclude that the information sought by the Union is not within the realm of managerial or entrepreneurial prerogatives and thereby information that the Employer would be privileged to withhold. In Graphic Arts Local 277, 219 at 1055, the Board stated that "where an employer attempts to avoid the economic impact of a strike by securing the services of others to do his struck work, that is, work which otherwise would have been done by his striking employees, the striking union has a legitimate interest in preventing these services from being rendered." In the instant case, the Employer has a strike at Nicolet and a lockout at Mobile Mill. Other locals of the Paperworkers represent these employees. Under Graphic Arts, supra, these other locals have a legitimate interest in preventing the Employer from performing struck work at Thilmany. By the same reasoning, it is at least arguable that the Thilmany Local (of the same International) has a corresponding legitimate interest in not performing the struck work. In addition, we note that the Employer has brought home its labor dispute with another unit of employees by transferring their struck work to an uninvolved unit, and has forced the uninvolved unit employees to aid the Employer's cause. In these circumstances, the Union's concern about the performance of struck work is legitimate.

The instant Union's stated purpose for obtaining the requested information includes deciding whether to ask the Employer to cease assigning struck work to unit employees, as the Union has successfully done in the past, and deciding whether to file a contractual grievance. As noted above, we believe that the Union has demonstrated the relevance of the requested information. In these circumstances we conclude that the Union is entitled to the requested information. [12]

We further conclude that the Employer has not provided the Union with the information it seeks. Thus, the Employer has made only an unsubstantiated assertion that as of June 25, no struck work from Nicolet Paper was being performed at Thilmany. The Employer has not offered evidence to support that assertion, nor has it informed the Union as to whether struck work from any of its other plants is being performed at Thilmany, or whether the performance at Thilmany of struck work from Nicolet Paper was resumed subsequent to June 25.

Accordingly, we conclude that the Employer has violated Section 8(a)(5) by failing to provide the Union with requested information that is relevant to "bargainable issues." The Region should, therefore, issue the appropriate complaint, absent settlement. [13]

H. J. D.

[1] All dates hereafter are in 1987.

[2] See, e.g., *New York Times Co.*, 270 NLRB 1267, 1273 (1984).

[3] *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956).

[4] *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967).

[5] See *New York Times Co.*, 270 NLRB at 1273, and cases there cited.

[6] *New York Times Co.*, 270 NLRB at 1273.

[7] The Employer does not contend that the Mobile Mill plant and the Nicolet Paper plant are separate employers from the Thilmany plant. It does contend, and we concede, that the three plants are separate units.

[8] See *Truck Drivers, Local 413 v. NLRB (Brown Transport Corp. & Patton Warehouse, Inc.)*, 55 LRRM 2878, 2882-83 (D.C. Cir. 1964).

[9] *Ford Motor Co. v. NLRB*, 441 U.S. 488, 498 (1979), quoting from *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 222-23 (1964) (Stewart, J., concurring).

[10] See case cited at fn. 8, *supra*.

[11] Cf. *Graphic Arts Local No. 277*, 219 NLRB 1053, 1055 (1975), *affd.* 540 F.2d 1304 (7th Cir. 1976) (union's threat to "neutral" employer that picketing might ensue if employer performed work for unrelated "primary" struck employer not violative of Section 8(b)(4)(B) where union represented "neutral" employer's employees and where "neutral" employer was a struck work ally of the primary employer).

[12] See *New York Times Co.*, *supra*.

[13] We would not defer the instant charge under *Collyer Insulated Wire*, 192 NLRB 837 (1971), since the duty to provide information is statutorily derived and preliminary to resolution of the parties' substantive dispute pursuant to their contractual agreement. See *General Dynamics Corp.*, 268 NLRB 1432, n.2 (1984).